# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 23516 of 2005

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAYURNAGAR VIKAS CHARITABLE TRUST THRO.MANAGING TRUSTEE & 1 - Petitioner(s)**

**Versus**

**PREMILABEN MAGANLAL LAKHATARIA & 1 - Respondent(s)**

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**Appearance :**

MR SHALIN N MEHTA for Petitioner(s) : 1 - 2.
MR BAIJU JOSHI for Respondent(s) : 1,
MR DIPAN DESAI, AGP for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 23/02/2006**

**ORAL JUDGMENT**

1.With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2.This Court on 30.1.2006 passed the following order:

1. *Upon hearing learned counsel for the petitioner Mr. Mehta, Mr. Desai, learned AGP for the State Authority and Mr. Joshi for the respondent No.1, it prima facie appears that once the orig. applicant before the Tribunal was acquitted from the criminal case on 02.06.2001, she would be entitled for the difference of salary minus subsistence allowance or salary already paid during the period when she remained under suspension from 29.10.1998 till the acquittal. After the acquittal, it was obligatory for the management to reinstate or to allow the orig. applicant before the Tribunal to resume the duty from 15.06.2001 and to permit her to continue on work upto 31.05.2003 However, it appears that the orig. applicant before the Tribunal has not actually worked and therefore she would at the most be entitled to 50% of the salary but the burden deserves to be transferred to the management and the Government could not be made to suffer. For the period from 29.10.1998 till 15.06.2001, the Government will have to bear the burden of the difference of the salary minus subsistence allowance/salary already paid because on account of the acquittal from criminal court, she would be required to be exonerated from the charges levelled against her.*

2. *I would have considered the matter finally. However, Mr. Mehta, learned counsel for the petitioner seeks time to get the instructions from his client. Hence* ***Rule*** *returnable on 22nd February, 2006. Mr. Joshi, waives notice of Rule on behalf of respondent No. 1.*

3. *By ad-interim order, it is directed that the proceedings before the Tribunal including that of execution proceedings shall remained stayed on the conditions that the petitioner deposits the amount of salary to the extent of 50% from 15.06.2001 till 31.05.2003; out of which, 1/2 of the amount on or before 14th February, 2006 & remaining on or before 7th March, 2006.*

4. *It is further directed that District Education Officer, respondent No.2 herein shall calculate the amount of full salary minus subsistence allowance or the salary already paid for the period from 29.10.1998 till 14.06.2001 and he shall also calculate the amount from 15.06.2001 till 31.05.2003 paid to the orig. application, respondent No. 1 herein from the fund of the Government through the management and while considering the question of payment , the aforesaid amount already paid from the Government Grant from 15.06.2001 till 31.05.2003 shall be given credit of and the amount if any remaining will be admissible for the purpose of grant to School for payment to the orig. applicant and consequently, if required, the School will have to forward a proposal for crediting the said amount as may be finalised by the District Education Officer in the direct payment account of the orig. applicant. The said exercise shall undertaken and completed on or before 21.02.2006. In case no extra payment is to be made as an outcome of the aforesaid exercise, then District Education Officer shall intimate to respondent No. 1 accordingly.*

*5.It is also clarified that in normal circumstances, for calculating the length of service of the respondent No. 1, the same would be upto 31.05.2003 for the purpose of computing the retiral benefits. However, the said aspects shall be finalised at the time of final hearing.*

*6.The amount of Rs. 10,000/-, which is deposited by the petitioner when this Court passed the order on 06.12.2005 is as compensation for the delay caused in preferring the petition and therefore the respondent No. 1 shall be at liberty to withdraw the amount of Rs. 8,000/- and Rs. 2,000/- shall be paid to the State Government through the office of the Government Pleader.*

*Direct service is permitted.*

3.Today, the learned Counsel appearing for the petitioners, Mr.Mehta and for the Respondent No.1, Mr.Joshi, learned Counsel declare before the Court that their respective clients have no objection if the final order is issued in terms of the interim order already passed by this Court on 30.1.2006.

4.Mr.Desai, learned AGP places on record the statement of calculation made by the office of the District Education Officer.

5.It has been further stated by Mr.Mehta, learned Counsel that the amount of Rs.45,711/- is already deposited on the basis of the calculation made by the petitioners being 50% of the amount, which was to be paid by the

Management and the remaining 50% of the amount as per his calculation comes to Rs.45711 and he states that to put a round figure it would be Rs.46,000/- yet to be deposited. It would be required for the Management to deposit the amount of Rs.46,000/- so as to comply with the interim order passed by this Court, for which joint request is to convert the interim order as final order.

6. The perusal of the statement submitted by the DEO shows that for the period from 29.10.1998 to 14.6.2001 the difference of Rs.76,148 is to be paid for admissibility of the grant, whereas the amount of Rs.60,045 is already paid by the State as grant in the direct payment scheme of the Respondent No.1 and, therefore, Mr.Desai, learned AGP submitted that Respondent No.2 be permitted to adjust the said amount since after 15.6.2001 as per the interim order, the burden is to be passed over to the Management and not to the Government.

7. It appears, therefore, that after deduction of the amount of Rs.60,045/- from Rs.76,148/-, the net amount payable to Respondent No.1 for the salary from 29.10.1998 to 14.6.2001 would be 16,148/-. The petitioner School shall forward the proposal for disbursement of the grant of Rs.16,148/- to be credited in the account of the Respondent No.1 and the

Respondent No.2 shall sanction the said amount as compliance to the order of this Court.

8. So far as the balance of Rs.46,000/- is concerned, Mr.Mehta, learned Counsel for the petitioner states under the instructions of his client, Mr.Sanghvi that the said amount shall be paid to the Respondent No.1 directly by “Account Payee” cheque/demand draft of Rs.12,000/- every month in three instalments and the last instalment of Rs.10,000/- shall be paid at the fourth month. The first instalment would become due on 31.3.2006 and he further states that the undertaking shall also be filed by the petitioner for the aforesaid purpose within a period of 10 days from today.

9. In view of the above and in view of the reasons recorded in the interim order dated 30.1.2006, the arrangement which was made at the interim stage can be finally allowed to stand since both the contesting parties have agreed for such purpose and as there is not going to be any additional burden on the part of the State Government for the period after acquittal the State will also not be prejudiced.

10. Therefore, it is hereby directed that the order dated 30.1.2006 passed at the interim stage shall operate finally, except with the further direction that the amount of Rs.16,148/- shall be admissible as grant to

the petitioner School for the salary to the respondent No.1 for the period from 29.10.1998 to 14.6.2001. The proposal for such purpose shall be forwarded within a period of two weeks from the date of the receipt of the order and the same shall be sanctioned by the Respondent No.2 and the amount shall be credited in the account of Respondent No.1. The petitioner has already deposited Rs.45,711/-. Respondent No.1 shall be at liberty to withdraw the said amount. The balance amount of Rs.46,000/- shall be paid by the petitioner to Respondent No.1 in monthly instalment of Rs.12,000/- and the last monthly instalment of Rs.10,000/-. The first instalment shall become due on 31.3.2006 of Rs.12,000/- and the subsequent instalments accordingly. The undertaking to that effect shall also be filed by the petitioner within a period of 10 days from today.

11. In view of the aforesaid, the order of the Tribunal, including the execution proceedings shall not survive and as a consequence thereof the Tribunal shall not be required to proceed with the proceedings, including the execution proceedings and shall dispose of the matter upon the copy of the order of this Court filed in the said proceedings.

12. The petitioner shall forward the pension papers of the respondent No.1 on the basis of the last salary as

ordered by the Tribunal to the competent Authority within a period of two months from the date of receipt of the order. It is clarified that the entitlement of the pension shall be subject to the final outcome of the appeal in the criminal proceedings.

13. The petition is allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no costs.

14. The Civil Application shall not survive in view of the order passed in the main Special Civil Application and hence, disposed of accordingly.

23.2.2006 **(Jayant Patel, J.)**

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